

IN THE
United States
Circuit Court of Appeals,
FOR THE NINTH CIRCUIT.

Otis Elevator Company,
Plaintiff-Appellant and Cross-Appellee,

vs.

Pacific Finance Corporation and Llewellyn Iron Works,
Defendants-Appellees and Cross-Appellants.

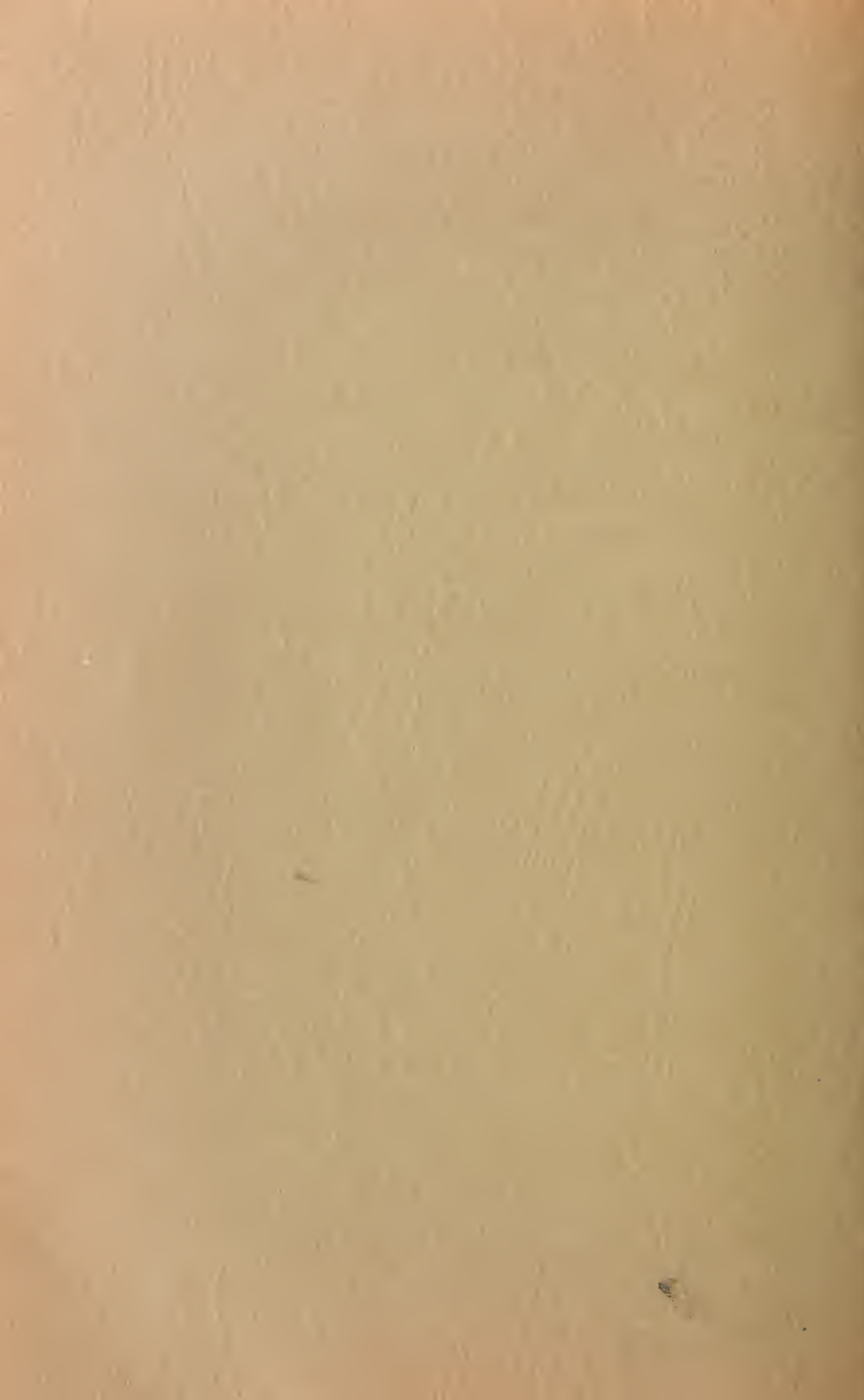
REPLY MEMORANDUM FOR DEFENDANTS.

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REPLY MEMORANDUM FOR DEFENDANTS.

Most of the matters contained in Plaintiff's Reply Brief are merely a restatement of what was previously said in plaintiff's main brief, and have already been covered in our principal brief. We are concerned primarily that the Court should not be misled by plaintiff's reference to the decelerating means shown in the prior art. Judge James held that none of the braking mechanism disclosed in the prior art was adaptable to fast-moving elevator cars [R. 640]. This finding is challenged in Plaintiff's Reply Brief, although plaintiff stipulated at the trial that the slow-down and self-leveling mechanism employed in

the present high-speed elevators required an invention not disclosed in the patent in suit [R. 257].

None of the decelerating mechanisms of the prior art referred to in Plaintiff's Reply Brief are adaptable for automatically slowing down a high-speed elevator car. Plaintiff refers to manually controlled mechanism adapted for high-speed cars. It refers to automatic mechanism adapted for slow-speed cars. It does not refer to automatic mechanism adapted for high-speed cars. If this distinction is borne in mind, it will be apparent that the finding made by Judge James is entirely correct. The absence of such mechanism in the prior art completely refutes plaintiff's principal argument that the so-called Parker control could be used to harness any form of high-speed elevator. The automatic stopping mechanism disclosed in the patent in suit is solely the form of mechanism long known in the prior art for automatically stopping slow-speed elevators.

Before the Parker invention there were high-speed manually-controlled electric elevators, and since elevators were slowed down and stopped, they possessed decelerating means. But these decelerating means were not automatic in their operation. The elevator operator had to control and manipulate the same by his car-switch lever. They could not be controlled by the elevator operator merely throwing his car-switch to the neutral position. The car-switch lever had to be moved back and forth to regulate and control the deceleration of the car manually in its approach to the landing. The elevator operator, in bringing a high-speed elevator car manually to a stop at a landing with his car-switch lever, manipulated the deceler-

ating means of the elevator, to compensate for different weights and speeds. These decelerating mechanisms could not be operated by the control described in the Parker patent. The Parker patent operates merely to throw the car-switch to the neutral position at a predetermined point from the landing. No means are described in the Parker patent for manipulating the car-switch lever back and forth, as different speeds and loads of the car require in decelerating the car to stop at a landing. In our Opening Brief, pp. 41-3, we thoroughly covered the stipulations made by plaintiff that there was no such mechanism in the prior art, and that the devising and discovery of the same constituted an invention made subsequent to the Parker patent.

None of the matters in the record referred to in Plaintiff's Reply Brief (p. 9) refer to any automatic decelerating means for slowing down and stopping a high-speed car. They are as follows:

Pages 394, 505, 509, 510, 422, 203, Vol. 3, p. 295; R. 406, all refer to the Ward-Leonard control. The Ward-Leonard control for elevators was known before the Parker patent, being used, however, on mine-hoists or elevators, and driving the elevator car at widely different speeds depending on the load in the car. Such elevator of course possessed decelerating means, but there was no automatic machine for operating the decelerating devices; they had to be operated by the elevator attendant manually moving his car-lever back and forth in accordance with the speed and load of the car. The testimony of Mr. DeCamp is undisputed that previous to the development by the Llewellyn Iron Works of the alleged infringing

elevators complained of herein, the Ward-Leonard control drove the elevator car at widely different speeds [see R. 127-134]; and there is nothing in the record to show that a high-speed Ward-Leonard elevator had ever been automatically slowed down and brought to a stop level with the landing.

The record, p. 378, contains a reference only to a selector machine; it has nothing to do with an automatic slow-down machine.

Record, p. 116, is the testimony of plaintiff's executive, Reed, who is not an engineer, and he only testifies that a leveling device was in use before the Parker patent; but this leveling device operated after the elevator operator had manually manipulated the decelerating means in accordance with the car speed and load to check the car speed a short distance above or below the landing.

Record, pp. 108-9, is the testimony of the patentee, Parker, who admittedly knew nothing concerning elevators; and Record, p. 562, is the Master's decision, following the testimony of Parker, but without any other support in the record and directly opposed to plaintiff's own stipulations.

On p. 28 of its Reply Brief plaintiff lists defendant's expert Doble's testimony with respect to certain prior art patents. None of these prior art patents discloses an automatic decelerating device adapted for use on high-speed electric elevators, and there is no testimony in the record, by Doble or anyone else, to any other effect. Doble, in testifying concerning certain slow-speed automatic-stopping elevators, mainly of the hydraulic type, testified that they possessed decelerating mechanisms.

The art well knew how to decelerate a slow-speed car to stop the same at a landing. This is sufficiently done by the mere application of the brake, as in the ordinary apartment-house elevators, or the elevator of the Ihlder patent. In the patents to Crouan, McFeely, and Ongley, Doble identifies decelerating mechanisms used on the slow-speed hydraulic elevators. These decelerating mechanisms will all be found to be devices for controlling a valve on the hydraulic motor. None of the same could be employed for automatically slowing down a high-speed elevator, and of course could not be employed on electric elevators.

The Kammerer patent discloses a mechanical device for manipulating a slow-speed hydraulic elevator. The Buffington patent discloses a modification of a friction brake.

On page 30 of Plaintiff's Reply Brief, it is stated:—

“The uncontradicted evidence thus shows that the identical drive and means for accelerating and decelerating used by the plaintiff in its signal control elevators, was known to elevator engineers and was in use ‘back beyond’ 1921 [R. 208, 108, 109, 116].”

This statement should be contrasted with the stipulations of plaintiff, Record, p. 257. The record citations are in entire harmony with plaintiff's stipulations, and contrary to the assertions contained in Plaintiff's Reply Brief. R. 208, 378, deal merely with the Ward-Leonard control, and not with automatic deceleration. R. 116 deals merely with leveling devices, and not automatic deceleration. R. 108-9 is again Parker's testimony, wherein he admits that he knows nothing about the elevator art.

If all of the citations in the Record referred to in Plaintiff's Reply Brief, under "POINT II.", are examined, nothing will be found which is in conflict with plaintiff's stipulations, or Judge James' findings.—

"It was admitted at the hearing before the master by plaintiff's counsel that further invention was required beyond that of Parker to make his system adaptable at all for fast moving elevators." [R. 640.]

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In attempting to meet our contention that the Intervening Rights of the defendant Llewellyn Iron Works are a bar to plaintiff prevailing in this case, plaintiff contends in its Reply Brief that the record does not support our statement that the No. 4 car of the Petroleum Securities Building was equipped with a car-switch whereby the car could be started only by the attendant in the car, but could be automatically stopped by push-buttons either in the car or at the landings. The Court will determine this issue from the testimony and the exhibits in the record. The drawings for this installation are in evidence. The testimony shows that the equipment on the No. 4 car was identical with that subsequently installed in the Pacific Finance Building, except that a different make of floor selector was used for the hall-buttons. The records are in evidence, showing that this car, so equipped, was placed in operation on August 4, 1925. It is not true that this installation was an abandoned experiment. It was still in use at the date of the trial. (Reference to

the record in support of these matters is contained in our main brief.) This car was inspected by the master at the trial of this case. At the conclusion of this inspection, the master made of record the following observations:—

“In all installations—and I don’t think there is any disagreement about this—that in all of these installations the operator would push the buttons and initiate the starting of the car, and throw his switch into neutral, and then the car would stop when we got to that floor; and we also found out that the buttons on the outside would stop the car.” [R. 512.]

In his report the master found:—

“The evidence shows that the original Parker patent, No. 1,506,380, was issued August 26, 1924, and that the defendants completed an experimental elevator, using a system of control similar to that found in the Pacific Finance installation on or about August 4, 1925.” [R. 588.]

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With respect to the Disclaimer, the contentions in Plaintiff’s Reply Brief, respecting what rights it may have had up to the hearing of this cause in the district court, are beside the point. The record conclusively establishes that at least as of the date of the hearing of this cause in the district court, plaintiff abandoned claim 37. [R. 549-50.] This hearing was on October 14 and 15, 1930. The disclaimer was not filed in the patent office until May 1, 1931. It is unnecessary to determine the effect of the delay between the date of the filing of the Master’s Re-

port and the date of the hearing on Defendant's Exceptions before the district court. Plaintiff has no excuse for the delay following the hearing before the district court, as of which date the record demonstrates that plaintiff had abandoned claim 37. The subsequent delay is fatal, under the *Ensten case*.

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The other matters contained in Plaintiff's Reply Brief are fully answered in our main brief.

Respectfully submitted,

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